

1 Hon. J. Richard Creatura
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**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON**

8 NATHEN BARTON,
9
10 Plaintiff,
11 v.
12 JOE DELFGAUW, XANADU
13 MARKETINGITNC., THE CREDIT PROS
14 INTERNATIONAL CORPORATION,
15 EXPERIAN INFORMATION
16 SOLUTIONS INC., LGNB LLC,
17 STARTER HOME INVESTING INC,
18 TORT EXPERTS LLC, LAW OFFICE OF
19 TOM WAGSTAFF, JR., LLC, LEARNER &
20 ROWE, PC DV INJURY LAW PLLC, &
21 JOHN DOE 1-10,
22 Defendants.

CASE NO. 3:21-cv-05610-JRC

**ANSWER AND COUNTERCLAIM OF
DEFENDANT STARTER HOME
INTESTING INC.**

18 STARTER HOME INVESTING INC,

19 Counterclaimants,

20 v.
21 NATHEN BARTON,
22 Counter Defendant.

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

Page 1
3:21-cv-05610-RJB

Law Office of Donna Beasley Gibson PLC
1204 Cleveland Avenue
Mount Vernon, WA 98273
206-242-5529

1 COMES NOW defendant STARTER HOME INVESTING INC and answers the
2 Complaint as follows: There are no paragraph numbers. Defendant responds to each
3 paragraph in order.

4 **I. BASIS FOR JURISDICTION**

5 Defendant lacks sufficient personal information to admit or deny the information as to
6 the residence of Plaintiff and leaves Plaintiff to its proofs as to the remaining allegations in
7 this paragraph.

8 Defendant admits that if Plaintiff does live in Washington that venue and jurisdiction
9 are proper in this Court. Defendant lacks sufficient personal information to admit or deny
10 the information as to the residence of Plaintiff and leaves Plaintiff to its proofs as to the
11 remaining allegations in this paragraph.

12 **II. THE PARTIES TO THE LITIGATION**

13 Defendant lacks sufficient personal information to admit or deny the information as to
14 the residence of Plaintiff and leaves Plaintiff to its proofs.

15 Page 2, Lines 15-Page 3 Line 18: This Defendant lacks sufficient personal knowledge
16 as to the information in the paragraphs, and therefore leave Plaintiff to its proofs.

17 Page 3, Lines 19-20: Denied. The address is 956 3 Mile Rd N.W., Grand Rapids, MI
18 49544.

19 Page 3, Lines 21-22: **Admitted**.

20 Page 4, Lines 1-18 Defendant lacks sufficient information to admit or deny the
21 information contained in these paragraphs leaves Plaintiffs to its proofs.

22 Page 4, Line 19: This is not an allegation and needs no answer.

Page 4 Line 20: Denied.

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

III. STATEMENT OF CLAIM

Page 4 Lines 22 – Page 5, Lines 1-4: Defendant lacks sufficient information on which to form a belief and therefore leaves Plaintiff to its proofs.

Text Messages from SMS Short Code 33959

Page 5 Lines 5- 22: Defendants lack sufficient information on which to form a belief and therefore leaves Plaintiff to its proofs.

Page 6 Lines 1-9: Defendants lack sufficient information on which to form a belief and therefore leaves Plaintiff to its proofs.

Page 6 Lines 10-14: Defendants admit the allegations contained in these paragraphs.

Page 6 line 15, is a question and not an allegation that deems a response.

Page 6 Lines 16 - 24 and Page 7, Lines 1-2: Defendant lacks sufficient information on which to form a belief and therefore leaves Plaintiff to its proofs.

Text Messages from SMS Short Code 365365

Page 7 Lines 4-14: Defendant lacks sufficient information on which to form a belief and therefore leaves Plaintiff to its proofs.

Text Messages from (803) 618-8038

Page 7 Lines 16-21 through Page 8, Lines 1-8: Defendant lacks sufficient information on which to form a belief and therefore leaves Plaintiff to its proofs.

Solicitations from 1st Time Home Buyer Program Inc.

Page 8, Lines 10-23 Defendant lacks sufficient information on which to form a belief and therefore leaves Plaintiff to its proofs.

Page 9, Line 1-12: Defendant lacks sufficient information on which to form a belief and therefore leaves Plaintiff to its proofs.

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC.**

1 **Enter the Credit Pros International Corporation**

2 Page 9 Lines 14-22 through Page 10 Lines 1-2: Defendant lacks sufficient personal
3 information to admit or deny the allegations contained in this Section and leave Plaintiff to its
4 proofs.

5 **More about (360) 318-7867**

6 Page 10, Lines 4-10: Defendant lacks sufficient personal information to admit or deny
7 the allegations contained in this Section and leaves Plaintiff to its proofs.

8

9 **Enter *ApexPageBuilder.com***

10 Page 10, Lines 12-24: Defendant lacks sufficient information on which to form a
11 belief and therefore leaves Plaintiff to its proofs.

12 Page 11, Lines 1-22: Defendant lacks sufficient information on which to form a belief
13 and therefore leaves Plaintiff to its proofs.

14 **Roundup Lawsuit**

15 Defendant lacks sufficient personal information to admit or deny the allegations
16 contained in this Section and leaves Plaintiff to its proofs.

17 **Roundup Lawsuit unsolicited call #1**

18 Defendant lacks sufficient personal information to admit or deny the allegations
19 contained in this Section and leaves Plaintiff to its proofs.

20 **Roundup Lawsuit unsolicited call #2**

21 Defendant lacks sufficient personal information to admit or deny the allegations
22 contained in this Section and leaves Plaintiff to its proofs.

Roundup Lawsuit unsolicited call #3

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

1 Defendant lacks sufficient personal information to admit or deny the allegations
2 contained in this Section and leaves Plaintiff to its proofs.

3 **Roundup Lawsuit unsolicited call #4**

4 Defendant lacks sufficient personal information to admit or deny the allegations
5 contained in this Section and leaves Plaintiff to its proofs.

6 **Roundup Lawsuit unsolicited call #5**

7 Defendant lacks sufficient personal information to admit or deny the allegations
8 contained in this Section and leaves Plaintiff to its proofs.

9 **Enter Tort Experts LLC**

10 Defendant lacks sufficient personal information to admit or deny the allegations
11 contained in this Section and leaves Plaintiff to its proofs.

12 **Zantac Unsolicited Phone Call #1**

13 Defendant lacks sufficient personal information to admit or deny the allegations
14 contained in this Section and leaves Plaintiff to its proofs.

15 **Talcum Powder Unsolicited Phone Call #1**

16 Defendant lacks sufficient personal information to admit or deny the allegations
17 contained in this Section and leaves Plaintiff to its proofs.

18 **Talcum Powder Unsolicited Phone Call #2**

19 Defendant lacks sufficient personal information to admit or deny the allegations
20 contained in this Section and leaves Plaintiff to its proofs.

21 **“You are receiving this message because you have previously opted in on injury
22 helpdesk survey path”**

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

1 Defendant lacks sufficient personal information to admit or deny the allegations
2 contained in this Section and leaves Plaintiff to its proofs.

3 **Auto Accident Unsolicited Phone Call #1**

4 Defendant lacks sufficient personal information to admit or deny the allegations
5 contained in this Section and leaves Plaintiff to its proofs.

6 **Paraquat Unsolicited Phone Call #1**

7 Defendant lacks sufficient personal information to admit or deny the allegations
8 contained in this Section and leaves Plaintiff to its proofs.

9 **Paraquat Unsolicited Phone Call #2**

10 Defendant lacks sufficient personal information to admit or deny the allegations
11 contained in this Section and leaves Plaintiff to its proofs.

12 **Paraquat Unsolicited Phone Call #2**

13 Defendant lacks sufficient personal information to admit or deny the allegations
14 contained in this Section and leaves Plaintiff to its proofs.

15 **Elmiron Unsolicited Phone Call #1**

16 Defendant lacks sufficient personal information to admit or deny the allegations
17 contained in this Section and leaves Plaintiff to its proofs.

18 **Elmiron Unsolicited Phone Call #2**

19 Defendant lacks sufficient personal information to admit or deny the allegations
20 contained in this Section and leaves Plaintiff to its proofs.

21 **Elmiron Unsolicited Phone Call #3**

22 Defendant lacks sufficient personal information to admit or deny the allegations
contained in this Section and leaves Plaintiff to its proofs.

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

1 **Elmiron Unsolicited Phone Call #4**

2 Defendant lacks sufficient personal information to admit or deny the allegations
3 contained in this Section and leaves Plaintiff to its proofs.

4 **Elmiron Unsolicited Phone Call #5**

5 Defendant lacks sufficient personal information to admit or deny the allegations
6 contained in this Section and leaves Plaintiff to its proofs.

7 **Elmiron Unsolicited Phone Call #6**

8 Defendant lacks sufficient personal information to admit or deny the allegations
9 contained in this Section and leaves Plaintiff to its proofs.

10 **Relationship Between the Defendants**

11 Page 19, Lines 1-7 Defendant lacks sufficient information on which to form a belief
12 and therefore leaves Plaintiff to its proofs.

13 Page 19, Lines 8-9: Denied.

14 Page 19, Lines 10-18: Defendant lacks sufficient personal information to admit
15 or deny the allegations contained in this Section and leaves Plaintiff to its proofs.

16 Page 19, Lines 19-23: Denied

17 Page 20, Lines 1-3: Denied.

18 **These calls are annoying**

19 Defendant lacks sufficient personal information to admit or deny the allegations
20 contained in this Section and leaves Plaintiff to its proofs.

21 **Joe Delfgauw's Personal Liability**

22 This answering Defendant lacks sufficient personal information to admit or deny the
allegations contained in this Section and leaves Plaintiff to its proofs.

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

Commercial Telephone Solicitors

The RCW speaks for itself.

Defendant lacks sufficient personal information to admit or deny the allegations regarding Credit Pros and Experian and “other Defendants” contained in this Section and leaves Plaintiff to its proofs.

DEFENSES

Defendant STARTER HOME INVESTING INC, asserts the following defenses

1. Ambiguity

This answering defendant assert that the plaintiff did not clearly state the issues in this case, making it difficult for defendant to fully respond, and therefore asks this Court for leave to amend this answer to assert additional defenses once information is discovered that would allow defenses to be known.

2. Sufficiency of Service of Process.

Defendant reserves the right to challenge the sufficiency of service of process.

3. Failure to State a Claim Upon Which Relief Can Be Granted

Plaintiff's complaint fails to state a claim upon which relief can be granted against these answering defendants.

4. Standing

Mr. Barton has fraudulently manufactured this lawsuit with the intent of obtaining money through the misuse of the TCPA and currently has at least nine active federal cases, which defendant believes shows bad faith on the part of Plaintiff. Mr. Barton is not the type of plaintiff the law was created to protect and therefore, lacks Article III standing to even bring the lawsuit. See *Stoops v. Wells Fargo Bank, N.A.*, 197 F. Supp.3d 782 (W.D. Pa. 2016).

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

5. Fraud

Defendant asserts that plaintiff or plaintiff's assignee used fraud, deceit or misrepresentation to invite the contact

6. Unclean Hands

These answering defendant assert that plaintiff or plaintiff's assignee committed a wrongful act and/or fraud and/or misrepresentation and is attempting to benefit from those acts through this lawsuit.

7. Failure to Mitigation

These answering defendant assert that neither plaintiff nor plaintiff's assignee on plaintiff's behalf to mitigate his damages.

AND NOW having answered the allegations of the Complaint and having pled affirmatively, these answering defendants deny that Plaintiff is entitled to any relief and demands that the Complaint be dismissed at Plaintiff's cost.

COUNTERCLAIM

STARTER HOMES INVESTING INC, (“Counterclaimant”) files this Counterclaim against NATHEN BARTON (“BARTON”), an in support of its individual Causes of Action state:

L. PARTIES

1.1 Counterclaimant STARTER HOME INVESTING INC is a domestic profit corporation, formed in the State of Michigan.

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

II. JURISDICTION AND VENUE

2.1 The original complaint was filed in this venue and jurisdiction.

III. ADDITIONAL FACTS

3.1 Counterclaimant STARTER HOME INVESTING INC is informed and believe and thereon allege that Counterdefendant NATHEN BARTON Obtained the phone number (360) 910-1019 in or about July 2020.

3.2 The previous owner of that phone number was a woman named Ivette Jimenez.

3.3 In April of 2021, Counterdefendant NATHEN BARTON opted into marketing campaigns to receive communication from an entity operated or represented by the Counterclaimant or one of its affiliates.

3.4 Counterclaimant is informed and believe and thereon alleges that Counterdefendant NATHEN BARTON provided the name of the former owner of the phone number when opting in to receive information.

3.5 Counterclaimant and its affiliates retain information and regarding the IP address of individuals that interact with its websites.

3.6 Counterdefendant opted in and gave false information with the intent that Counterclaimant and its affiliates would rely on the information provided, and then waited for contact

3.7 Once Counterdefendant was contacted by Counterclaimant and its affiliates, and other businesses, Counterdefendant NATHEN BARTON filed his complaint stating only the area code of the number he provided so that once complaint could not be traced to the opt-in information.

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

1 3.8 Counterclaimant is informed and believes and thereon alleges that
2 Counterdefendant NATHEN BARTON opted in with the intent to engage Counterclaimant
3 and its affiliates in actions that Counterclaimant intended to use to file lawsuits claiming
4 violation of the TCPA.

5 3.9 Counterclaimant is informed and believes and thereon alleges that
6 Counterdefendant NATHEN BARTON had a scheme to “get rid of robocalls” and purposely
7 sought out businesses to sue for his own personal financial gain.

8 3.10 Counterdefendant has filed at least nine similar lawsuits in this and other courts,
9 alleging similar actions.

10 IV. CAUSE OF ACTION – FRAUD

11 4.1 Counterclaimant repeats and realleges the allegations set forth in paragraphs 1.1
12 through 3.10

13 4.2 Counterclaimant is informed and believe and thereon alleges that BARTON
14 used a false name when opting-in.

15 4.3 Counterclaimant is informed and believes and thereon alleges that BARTON
16 filed a complaint alleging actions involving a phone number but only stated an area code, for
17 the purpose of hiding the phone number involved so that his true actions could not be traced.

18 4.4 Counterclaimant is informed and believes and thereon alleges that BARTON
19 falsely represented this information for the purpose of showing that the messages he received
20 were unsolicited.

21 4.5 Counterclaimant is informed and believes and thereon alleges that BARTON
22 represented himself using a false name when he opted-in and to represent to the court in his

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

1 lawsuit that he had never opted in to receive information, and to induce Counterclaimant (and
2 other businesses) to believe BARTON was interested in marketing communication.

3 4.6 Counterclaimant is informed and believes and thereon alleges that BARTON
4 did these actions complained of to further his mission to “take down robocallers”.

5 4.7 Counterclaimant is informed and believes and thereon alleges that when
6 BARTON made these representations, he knew they were false.

7 4.8 Counterclaimant is informed and believes and thereon alleges that when
8 BARTON made this representation he did so with the intent that Counterclaimant would act
9 on it.

10 4.9 Counterclaimant took its actions in reliance on BARTON’s representations.

11 4.10 Counterclaimant suffered injuries based on the actions of BARTON.

12 V. CAUSE OF ACTION -FRAUD BY NONDISCLOSURE

13 5.1 Counterclaimant repeats and realleges the allegations set forth in paragraphs 1.1
14 through 4.10

15 5.2 Counterclaimant is informed and believes and thereon alleges that when
16 BARTON knew or had reason to know that prior to his lawsuit, he affirmatively gave
17 Counterclaimant and/or third parties consent to receive text messages and phone calls from
18 Counterclaimant’s and third party providers. BARTON took no action to correct that opt-in
19 information

20 5.3 To the extent that BARTON did not wish to receive text messages and/or phone
21 calls at the alleged 360 phone number, he intentionally concealed from or failed to disclose
22 that fact to Counterclaimant. Because BARTON was the person with the most knowledge
related to whether he wished to receive text messages and phone calls at his phone number,

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

1 and because he was well aware of potential liability under the TCPA (based on his multiple
2 lawsuits), BARTON had a duty to disclose to Counterclaimant his desire not to receive such
3 contact.

4 5.4 BARTON's failure to disclose his desire to not receive text messages and
5 phone calls was material because he knew that Counterclaimant had received an opt-in notice
6 from BARTON for the alleged phone number

7 5.5 By failing to disclose his desire to not receive text messages and phone calls
8 BARTON intended Counterclaimant to fulfill their contractual obligation with third parties
9 who would then send BARTON text messages that all believed had been requested by
10 BARTON. Counterclaimant expended both employee time and resources to fulfill its
11 contractual obligations based on BARTON's failure to disclose

12 5.6 Despite knowing about BARTON's opt-in and failure to disclose to
13 Counterclaimant that BARTON did not want to receive text messages or phone calls,
14 BARTON claimed that those messages were "unsolicited" in his lawsuit

15 **CONCLUSION AND REQUEST FOR RELIEF**

16 Counterclaimant request that the Court enter a judgment that BARTON is liable for
17 common-law fraud and fraud by non-disclosure and award Counterclaimant's actual damages,
18 exemplary damages, interest, costs, attorneys' fees and all other relief that this Court finds fair
19 and just.

20 Dated this 8th day of November, 2021

21 s/Donna Gibson
22 Donna Gibson WSBA 33583
Attorney for Defendants
STARTER HOME INVESTING INC

**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

1 Law Office of Donna Beasley Gibson
2 1204 Cleveland Ave
3 Mount Vernon, WA 98273
4 206-242-5529/Fax: 425-332-7068
5 beasleylaw@msn.com
6 donna@donnagibsonlaw.com

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**ANSWER AND COUNTER-CLAIM OF DEFENDANT STARTER
HOME INVESTING INC**

Page 14
3:21-cv-05610-RJB

**Law Office of Donna Beasley Gibson PLC
1204 Cleveland Avenue
Mount Vernon, WA 98273
206-242-5529**